

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070202
	:	TRIAL NO. B-0309521
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
BENNY BYRD,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

In August 2003, defendant-appellant Benny Byrd was seen riding a moped without a headlight or a helmet. Officer Jason Etler of the Mount Healthy police pulled Byrd over. Byrd could not produce a driver's license and gave a false name. When Officer Etler went to his police vehicle to check the name in the computer, Byrd ran away on foot. Etler chased Byrd, which resulted in a physical altercation, and Byrd was able to get away. Etler identified Byrd through the moped license plate, and Byrd was later arrested and charged with aggravated robbery and assault.

After a trial to a jury, he was convicted on both counts. Byrd has filed three prior appeals with this court.<sup>2</sup> In his current appeal, he raises three interrelated assignments of error in which he argues that the trial court erred in denying his

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> 1st Dist. Nos. C-04005 and C-040017, 2004-Ohio-7127; 1st Dist. No. C-050111, 2005-Ohio-1219; (May 9, 2007), 1st Dist. No. C-060740.

delayed motion for a new trial, because Etler, the officer who had arrested him and was the only eyewitness at his trial, was himself arrested three years later and convicted of attempted importuning, a first-degree misdemeanor. Byrd argues in his brief that “pedophiles are natural liars, con-artists, and deviant sociopaths.” He claims that because of Etler’s subsequent conviction, his testimony in Byrd’s case was tainted and Byrd should have received a new trial.

Motions for a new trial are not to be granted lightly.<sup>3</sup> The granting of such a motion is in the sound discretion of the trial court.<sup>4</sup> The requirements to obtain a new trial based on newly discovered evidence are set out in *State v. Petro*.<sup>5</sup> One of the requirements is that the defendant must show a strong probability that a new trial would produce a different result.<sup>6</sup>

In this case, even if a new trial had been granted, Byrd could not have impeached Etler with the attempted-importuning conviction. Under Evid R. 609, a witness can only be impeached with a misdemeanor if it involves a crime of dishonesty or a false statement. Since attempted importuning involves neither, the officer could not have been impeached in this case, so the testimony in a new trial would not have differed from the original trial. Consequently, the trial court did not err in denying Byrd’s motion for a new trial. We, therefore, overrule his three assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HILDEBRANDT and CUNNINGHAM, JJ.**

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<sup>3</sup> *State v. Wells* (Oct. 22, 1998), 9th Dist. No. 73481.

<sup>4</sup> *State v. Williams* (1975), 43 Ohio St.2d 88, 330 N.E.2d 891.

<sup>5</sup> (1947) 148 Ohio St. 505, 76 N.E.2d 379, syllabus.

<sup>6</sup> *State v. Holmes*, 9th Dist. C.A. No. 05CA008711, 2006-Ohio-1310.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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*To the Clerk:*

Enter upon the Journal of the Court on March 5, 2008

per order of the Court \_\_\_\_\_.

Presiding Judge